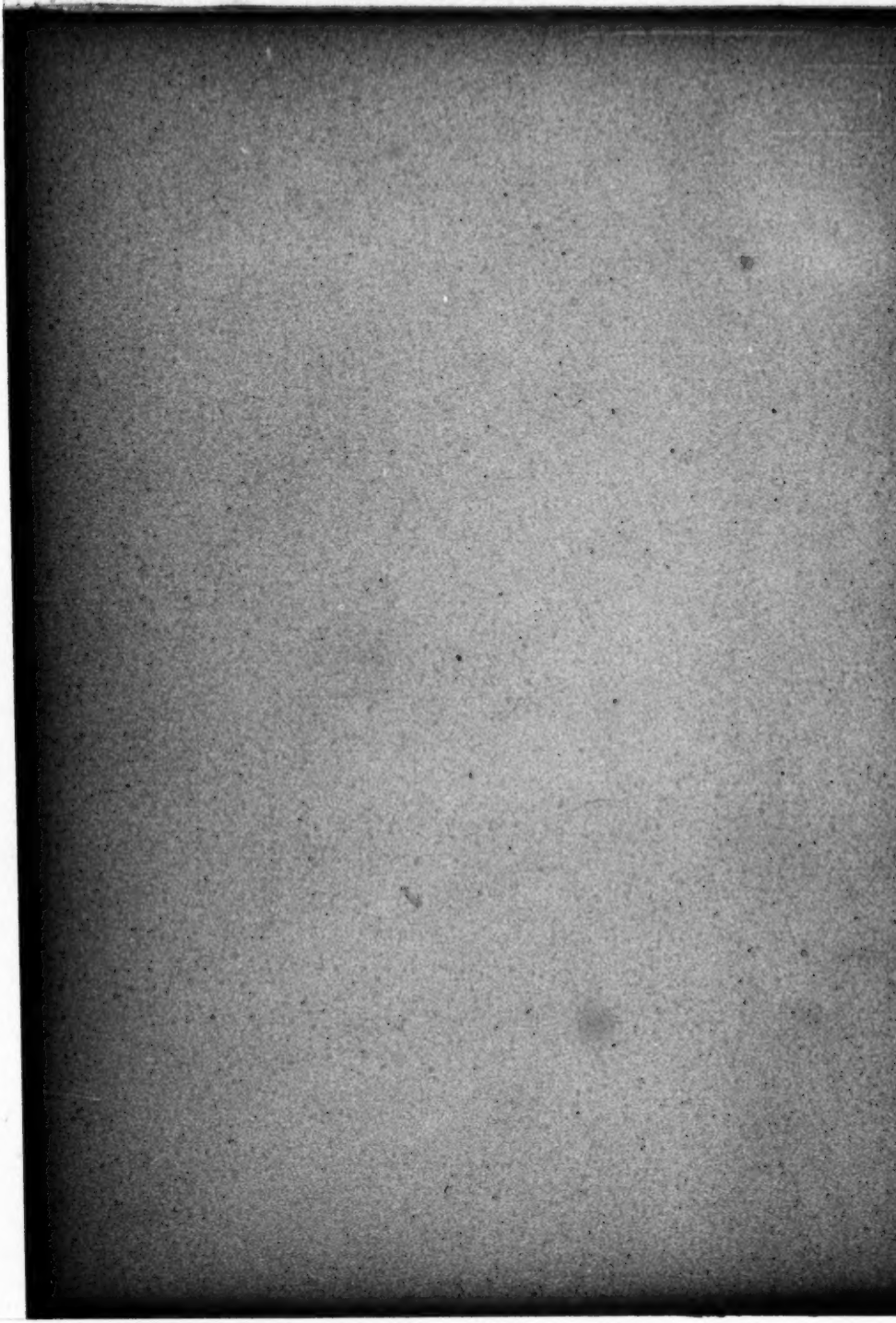

In the

Supreme Court of The United States

OCTOBER TERM, 1972

No. 72-887

AMERICAN PARTY OF TEXAS, et al,
Appellants,

v.

BOB BULLOCK, Secretary of State of Texas,
Appellee.

No. 72-942

ROBERT HAINSWORTH,
Appellant,

v.

BOB BULLOCK, Secretary of State of Texas,
Appellee,

Appeal from the United States District Court for the Western District of Texas

BRIEF FOR APPELLANTS AMERICAN PARTY OF TEXAS

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April, 1973.

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RIGHT TO VOTE		
TEXAS STYLE		GEORGIA
Democrat & Republican	ALL Third Parties	ALL Voters
PARTY PRIMARY: 200,00 Votes For Party Nominee For Govenor		ALL Parties 20% of votes cast for Govenor or President in last election
Automatic	One Year of Preliminary Party Organization	NONE
60 Days ABSENTEE Voting Paid for by State	NONE	Simultaneous for ALL Voters 180 days for Petitions
PARTY PRIMARY No limit on numbers of candidates for nomination Tax funds used to pay all PARTY expenses including 5% bonus to Party Chairman Participation is Party Registration	NOW hold precinct conventions ALL Party Voters PROHIBITED to sign petitions NOW begin Petitions in exact form Print * Circulate * Sign & Notarize	Unlimited cross signing by ALL Voters Simple form Petitions NO Oath
SECOND (RUN-OFF) PRIMARY Tax funds used to pay all PARTY expenses including 5% bonus to County Chairman $3,000,000.00 Total cost to taxpayers in 1972	HOLD COUNTY CONVENTIONS Petitions signed by 1% of total vote for Govenor FILED with State within 55 days LIMITATION All costs paid by voters in Party	5% eligible vote for that office

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SUMMARY STATEMENT OF THE CASE

AMERICAN PARTY OF TEXAS, Appellant, was a viable political party in Texas in 1968 with 91,958 registered party members by participation in precinct conventions. George Wallace as the Party's nominee and standard-bearer received 584,269 votes in Texas for the Presidency of the United States. Statutorily,[1] the right to ballot position in the general election

[1] Election Art. 13.45 at Appendix C.

in Texas is regulated by the number of votes received by the nominee for governor in the last preceding general election. The AMERICAN PARTY had no gubernatorial nominee in 1968 or in 1970.

A political party with state-wide organization is limited to a single exact procedure to nominate candidates for ballot position under its party label.[2] There is no alternative access to the ballot.

On September 1, 1971, more than 14 months prior to the 1972 Presidential Election, the AMERICAN PARTY OF TEXAS began the statutorily prescribed detailed steps to nomination by convention by filing its declaration of intention to nominate by convention.[3] On February 22, 1972, the State Executive Committee certified to the Secretary of State the names of persons who had filed on or before February 7, 1972,[4] to be candidates for the AMERICAN PARTY'S nomination. Party Rules were adopted and filed with the Secretary of State.[5] The American Party of Texas continuatively held precinct conventions[6] for the election of delegates to the county conventions, held county conventions for nomination of precinct, county and district candidates and election of delegates to State Convention; and held the State Convention on June 10, 1972, and certified to the Secretary of State the nominees for state-wide offices. All of the nominees were summarily denied ballot position and there was no AMERICAN PARTY label on the general election ballot because only 2,732 persons signed sworn statements

[2] Election Art. 13.45 (1969) Appendix A page A-5
[3] Election Art. 13.46 (1963)
[4] Election Art. 13.12 (3) (1969)
[5] Election Art. 13.43 (b) (1971)
[6] Election Art. 13.47 (1967) Appendix A page A-7

of participation in precinct conventions and only 5,096 registered voters who had not participated in the primary of another political party were willing to sign notarized petitions to gain ballot position for the AMERICAN PARTY. These petitions could not be circulated before party primary day, and the deadline for filing of the petitions was June 30th,[7] a mere 55 days to obtain in excess of 22,000 notarized signatures of registered voters who were unable or unwilling to participate in a state-tax-paid for party primary or run-off primary of a major political party. In most campaigns the Democratic primary nomination is tantamount to election in Texas.

The Texas Election Code specifically requires all candidates complete their applications for nomination under a party label and file before 6 p.m. on the first Monday in February. Each of the political parties certifies the list of candidates so filing to the Secretary of State within 10 days after the first Monday in February.[9] In February, 1972, the Secretary of State as the Chief Election Official in Texas knew there would be but 6 possible political parties seeking ballot position in November, 1972, and these political parties would be only the Democratic, Republican, the American Party of Texas, Texas New Party, Texas Socialist Workers Party, and Raza Unida which together with a column for independent candidates would establish a general election ballot of seven columns only.

Based on this Court's ruling in *Bullock v. Carter*[10], the Governor of Texas called a Special Session of the Legislature in

[7] Election Art. 13.45 (2) (1969) Appendix A page A-5
[8] Election Art. 13.12 (2) Appendix A page A-2
[9] Election Art. 13.12 (3) Appendix A page A-4
[10] 405 U. S. 134

March, 1972, for the limited purposes of enacting a billboard law to comply with the Federal Highway Act and to enact a Primary Financing Law. The intent of the Legislature in enacting the Primary Financing Law of 1972,[11] was stated:

> "Section I. Purpose
>
> The invalidation by federal court decisions of the statutory method of financing primary elections in this state necessitates legislative action to provide a solution to the *impasse facing political parties* which cast more than 200,000 votes for Governor in the last preceding general election, in that the existing law requires that their nomination for the general election be made in primary elections but *they* are left without adequate means to finance the primaries * * *
>
> Section 2. Conduct of the Primary Elections
>
> Nominations for the general election to be held on November 7, 1972, shall be made in the *manner provided in the Texas Election Code.* The primary elections held by a political party pursuant to Section 180 and 181, Texas Election Code (Articles 13.02 and 13.03 Vernon's Texas Election Code) shall be conducted through the *party's state executive committee and county executive committees* * * *"

The Texas Legislature specifically provided for the cost and primary expenses of the Democratic political party and the Republican political party and excluded by omission the nominating expenses of the four minority parties nominating by convention in 1972.

AMERICAN PARTY OF TEXAS filed suit in the United States District Court for the Western District of Texas, Midland-Odessa Division, seeking a temporary injunction against the statutory exclusion of the AMERICAN PARTY from general

[11]Vol. 9, V.A.C.S. Election 13.08 C-1, Appendix A at A-8

election ballot position and challenging the constitutionality of V.A.C.S. Election § 13.45 and attacking the constitutionality of payments out of State tax funds for the Democratic and Republican Party primaries under the Primary Financing Law of 1972.

On June 14, 1972, after notice and hearing, the District Court[12] entered a Temporary Restraining Order against the Secretary of State of Texas, restraining him from refusing to accept and file supplemental nominating petitions obtained by the AMERICAN PARTY between June 30, 1972, and September 1, 1972. The AMERICAN PARTY continued to circulate these petitions and secured 17,678 additional signatures.

The AMERICAN PARTY also pursued its attack on the Primary Financing Law of 1972[13] by filing its Motion for Ancillary Relief to prevent any payments to be made under the Act until its constitutionality had been judicially determined. The District Court[12] summarily denied the Restraining Order against the payments pursuant to the Primary Financing Law by Order entered June 16, 1972.

The AMERICAN PARTY immediately filed its Motion for Hearing for June 30, 1972, and this Motion was denied by Order entered June 26, 1972, with notification to the Honorable John R. Brown, Chief Judge of the United States Court of Appeals for the 5th Circuit for an order consolidating the cases pending in Texas involving the same issues.

The Order of Consolidation was entered on July 28, 1972, consolidating RAZA UNIDA PARTY, et al, v. BOB BUL-

[12]USDC — Western Dist. Tex. Midland-Odessa Division, Suttle, J.
[13]Vol. 9, V.A.C.S. Election 13.08 C-1, Appendix A, page A-8

LOCK, SA-72-CA-158; AMERICAN PARTY OF TEXAS, et al, v. BOB BULLOCK, MO-72-CA-50; LAUREL DUNN, et al, v. BOB BULLOCK, W-72-CA-37; TEXAS NEW PARTY, et al, v. PRESTON SMITH, Governor, and BOB BULLOCK, C. A. 72-H-990, in the United States District Court for the Western District of Texas, San Antonio-Division and ordering the impaneling of a 3-Judge Federal Court. By Order of July 31, 1972, the cases were set for hearing on the merits in San Antonio Division of the United States District Court for the Western District of Texas for Thursday, September 7, 1972.

On August 31, 1972, pursuant to the Temporary Restraining Order entered on June 14, 1972, the State Chairman of the AMERICAN PARTY certified the filing of 17,678 names to the Secretary of State urging the nominees of the AMERICAN PARTY to be placed on the general election ballot.[14] The AMERICAN PARTY OF TEXAS had then certified 25,506 names of qualified voters on sworn petitions requesting that the names of the Party's nominees be printed on the general election ballot.

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[14]Vol. 9, V.A.C.S. Election Art. 13.45 (2) required that the address and registration certificate number of each signer be shown on the petition and further than no person who, during that voting year, had voted at any primary election or participated in any convention or any other party shall be eligible to sign the petition and that to each person who signs the petition, there shall be administered the oath: "I know the contents of the foregoing petition requesting the names of the nominees of the AMERICAN PARTY be printed on the ballot for the next general election. I am a qualified voter at the next general election under the Constitution and Laws in force, and during the current voting year I have not voted in any primary election or participated in any convention held by any other political party." The Certificate of the Officer administering the oath may be so made as to apply to all to whom it was administered.

The facts before the 3-Judge panel of the United States District Court for the Western District of Texas were presented by stipulation. The Motions, Orders and stipulations are contained in the printed Appendix.

All of the nominees of the AMERICAN PARTY and the AMERICAN PARTY label were excluded from the general election ballot in Texas in 1972.

OPINION BELOW

On September 15, 1972, a 3-Judge Federal District Court convened in the Western Distict of Texas, San Antonio Division, entered a Memorandum Opinion and Order dismissing each of the four consolidated complaints and denying all relief requested by Plaintiffs. The Temporary Restraining Order extending the time to gather the signatures on nominating petitions was dissolved, and all signatures (17,678) obtained during that period were held to be null and void. The District Court's Opinion is printed at 349 Fed. Supp. 1272 and is contained in the Appendix A at Page 17 of the Jurisdictional Statement.

American Party of Texas filed an Application for Temporary Restraining Order with this Court, No. A-325, which was denied by the Court on October 5, 1972, with Mr. Justice Douglas, dissenting. This succinct dissent is printed at ..... U.S. ....., 34 L Ed 2d 63-64, and is contained in Appendix B infra.

Probable jurisdiction was noted by Order of the Court on March 5, 1973.

No other preliminary or interim orders have been entered.

JURISDICTION

The Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1253.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

This appeal involves the First Amendment and Section 1 of the Fourteenth Amendment to the United States Constitution. The challenged provisions of the Texas Election Code are Volume 9 of Vernon's Annotated Civil Statutes Election Articles 13.12, 13.45 and 13.47 (as amended) hereinafter cited as Election Art. ..... Election Article 13.08 c-1, also cited as the [McCool-Stroud] Primary Financing Act of 1972; which are reprinted in Appendix A. Page A-8 V.A.C.S. Election Art. 13.45 (1963) which was the applicable law prior to the (1969) amendment is reprinted in Appendix C.

Questions Presented

1. Whether the totality of the general election ballot certification requirements imposed on minority parties and independent candidates by the Texas Election Code, including provisions forcing such parties and candidates to obtain the *notarized* signatures of approximately 22,000 registered voters who have not previously participated during the same election year in a major party primary election or nominating convention, but limiting the time for obtaining such signatures to a period of approximately 55 days following the major party primary elections, and further requiring that a candidate formally file for office approximately nine months before the general election and approximately three months before the primary elections, abridges the rights of free association, liberty,

Due Process and Equal Protection guaranteed by the First and Fourteenth Amendments.

2. Whether a State election law prohibiting minority parties and independent candidates from circulating nominating petitions for the general election until after the major party primary elections, and further providing that a voter who has previously participated in a major party's primary election or nominating convention is thereafter ineligible to sign a nominating petition during the same election year, abridges the rights of free expression, association and liberty guaranteed by the First and Fourteenth Amendments.

3. Whether a State election law financing major party primary elections but denying financial assistance to minority parties required by State law to incur substantial expense in placing their candidates' names on the general election ballot is violative of the Due Process and Equal Protection clauses of the Fourteenth Amendment.

4. Whether a State election law permitting absentee balloting for a major party candidate but precluding an absentee vote for a minority party or independent candidate is violative of the Due Process and Equal Protection clauses of the Fourteenth Amendment.

SUMMARY OF ARGUMENT

The Texas Election Code is invidiously designed to exclude from the election procedures those unorthodox individuals known conjunctively as minority parties. These individuals as members of the American Party of Texas, the Texas New Party, Raza Unida, and the Texas Socialist Workers Party by operation of the restrictive and oppressive details of Art. 13.45 (2) of the Texas

Election Code are being denied their constitutionally protected rights of assembly in support of their political beliefs which rights are guaranteed by the First Amendment to the United States Constitution. These individuals are being summarily excluded from their right to cast an effective vote for the candidate of their choice which right is protected by the due process and equal protection provisions of Section 1 of the Fourteenth Amendment to the United States Constitution.

The Democratic Party has historically manipulated Texas Government as a party agglutinant. Nevertheless, biennial revisions of the Texas Election Code have proved insufficient to exclude the Republican Party and the rising minority parties. It was obvious that immediate and more stringent revisions of the Election Code[15] were the only solution to prevent recurrence of the 594,000 votes cast in 1968 for the minority candidate for the President of the United States. In addition to the extensive detailed procedural requirements for certification as a party of state-wide organization as a prerequisite to secure the right to nominate by convention, the Texas Legislature in 1969 invidiously amended Art. 13.45 to require that proof of participation in the third party be evidenced by notarized petitions in exacting detail. Potential participants in the minority party were excluded from absentee voting. Criminal sanctions prevented the voters in a major party primary from assisting the minority party to ballot position by signing the petition. After the registered voters had been subjected to the well-financed campaign and the news media cry for exercising the patriotic duty to vote, then and only then were the minority parties allowed

[15]Vol. 9, V.A.C.S. Election, Art. 13.45 (1963-Prior Statute) Appendix C. Amended Art. 13.45 (1969) Appendix A, page A-5

to begin to circulate petitions for ballot position.[16] The minority parties were compelled to literally seek out those registered voters who were unwilling and unable to vote in either of the *State paid for* major party primaries. Meanwhile, the numerous candidates had been narrowed to *two* in the highly contested state-wide races such as the nomination for Governor, and again these candidates by spending in excess of $1,000,000.00 cajoled and encouraged *all* voters to participate in the major party run-off primary just 30 days hence and wholly within the 55 days total allowance to minority parties to individually persuade these same registered but previous (primary) non-voters to sign a notarized petition wherever these left-over voters could be found with a notary in attendance. Four minority parties competed in seeking out these indifferent citizens and actually performed a great service in securing voter registration. The petitions had to be printed according to the exacting detail of the Statute in a sufficient number to assure adequate distribution for 23,000 signatures including name, address, registration number, date, oath and notary. Only Raza Unida and the Texas Socialist Workers Party succeeded in getting enough signatures within the time limitation, and both parties were certified by the Secretary of State for ballot position. The American Party of Texas had secured the printing of the petitions, had distributed the petitions, had secured the requisite number of signatures,[17] paid the notary fees and filed the petitions with

[16]V.A.C.S. Election Art. 13.45 (2).

[17]During the additional time granted by the District Court under the Temporary Restraining Order; but, these signatures were held to be null and void by the Memorandum Opinion of the 3-Judge Federal Court below and this expenditure of monies and time was voided without recourse because the American Party was not on the general election ballot.

the Secretary of State. The nominees of the American Party were summarily excluded from the ballot.

The State of Texas out of its state tax funds paid in excess of $3,000,000.00 to the Democratic political party and to the Republican political party to reimburse each political party for its total primary expense including printing ballots, salaried workers, buildings for voting and supplies. Based on the primary expense in each county, an additional 5% bonus was paid to the Party County Chairman. This is political party favor — Texas Style. The misnomer of a Primary Financing Law[18] was really a disbursement of public tax monies to the Democratic and Republican parties. The obvious rewards were primary expenditures plus 5% bonus for the County Chairman. This disbursement of tax funds to a political party violated the equal protection clause and was a taking of property (from members of minority parties) without due process of law.

The Texas Legislature had successfully excluded effective party opposition by statutory denial of ballot position and had in fact nutured this success by payments of tax monies to the democratic and republican parties. The obvious rewards were three-fold: (1) The Democratic party preserved its control of Texas by financially separating the party faithful from the opposition voter; and (2) the exclusion of the opposition party from ballot position guaranteed ineffective opposition in 1974 when the next ballot will be controlled by the numbers of vote received in 1972;[19] and (3) prohibited the national

[18]V.A.C.S. Election Art. 13.08 c-1

[19]This reward is expected to increase by bills pending in the 1973 Session of the Texas Legislature which will again raise the vote for Governor requirement for ballot position specifically to exclude Raza Unida whose nominee did in fact receive more than 200,000 votes for Governor in 1972.

American Party from participation in the Federal funding of the Presidential campaign of 1976.[20]

The Texas Election Code again emerged as the great political silencer. The unorthodox voter was again relegated to the historically Texas alternative of the negative vote.

ARGUMENT

I.

The Texas Election Code is invidiously designed to exclude from all election procedures those unorthodox individuals known conjunctively as minority parties.

A. Access to the Ballot is blocked.

The original complaints filed in the lower Court by the AMERICAN PARTY OF TEXAS, THE TEXAS NEW PARTY, THE TEXAS SOCIALIST WORKERS PARTY, and RAZA UNIDA in each instance contested the constitutionality of Vernon's Annotated Civil Statutes Election Article 13.45 of the Texas Election Code.[21] These minority parties by constant diligence and unrelenting efforts had successfully completed each of the statutorily dictated intricate requirements for certification as state-wide political parties. They had met recurring deadlines over a period of many months during which a single omission or error in filing would have been fatal to the entire Party. In addition to these procedures, Article 13.45 (as amended in 1969) required proof of minimum party participation by nota-

[20]Presidential Election Campaign Fund Act—Sec. 9001, Internal Revenue Code Act. of 1971, amending 26 U.S.C. (I.R.C. 1954) by adding 9001 et seq. Sec. 9002 (7) classifies a minor party as one whose candidate for the office of President in the preceding presidential election received, as the candidate for such party, 5% or more but less than 25% of the total popular vote in the U.S.

[21]Appendix A, page A-5

rized petitions signed by registered voters under oath giving their name, address, registration number, date and proof of unwillingness or inability to participate in another political party during that voting year.[22] This Party participation so certified was required to be in a minimum number of 1% of the total votes cast for Governor in the preceding general election. By contrast, prior to the 1969 effective date of Art. 13.45 (as amended), any political party had ballot position in the general election by the fact of nomination which until 1967 had included write-ins in the party primaries.[23] The abolition of write-ins was directed against the Republican Party which had nominated its candidates for the general election ballot using write-ins in the party primary. Undoubtedly, many of the (Republican) pre-*Bullock v. Carter* candidates had been excluded from the Democratic party primary by the exorbitant filing fees. One of the keys to securing Republican candidates has been the minimal filing fees.

The obvious purpose of the Texas Legislature in its continuing revision of the Texas Election Code has been to perpetuate the control by the Democratic Party. With due respect to its past exclusion of the Republican Party, the Republican Party now exists in Texas, but without effective political power against the overwhelming control exerted by the Democratic party through the Texas Election Code. By analogy, the Code affords such predominating power to the Democratic party that it could

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[22]V.A.C.S. Art. 13.45 (2) A person who signs a petition after having voted in a primary election or participated in a convention of any other party during the same voting year is guilty of a misdemeanor and upon conviction shall be fined not less than $100 nor more than $500.

[23]V.A.C.S. Election Art. 13.09 (Amended 1967) prohibits write-ins in primaries.

be compared to a bank which accepts your deposits, but by refusing to issue forms for checks prevents any withdrawals or participation. A further pursuit of the analogy shows that Democrats have the right of automatic withdrawal by party participation. The Democrat-controlled legislature through capricious, arbitrary and unreasonably detailed requirements of the Texas Election Code has made it virtually impossible for a new political party with or without[24] state-wide party organization to have its nominees appear under its party label on the general election ballot. The fundamental function of a political party primary is to nominate candidates who will advance the ideals and principals of that party.[25] The voters in Texas are denied the guide of a party label to choose electors pledged to particular candidates for the Presidency and Vice-Presidency of the United States. It is indisputable that printed ballot position for the candidate is necessary to election. More than 3,000,000 voters participated in the 1972 general election, and obviously exclusion of nominees from the printed ballot precluded election. This discrimination was proscribed in *Turner v. Fouche.*[26]

> " * * * appellants and members of their class do have a federal constitutional right to be considered for public service without the burden of invidiously discriminatory qualifications. The State may not deny to some the privilege of holding public office that it extends to others on the basis of distinctions that violate federal guarantees * * * "

[24]Election Art. 13.54 Nominations by parties without State Organization; Election Art. 13.50 Nonpartisan and independent candidates.

[25]The liberty of association is secured against intrusion by resort to the Fourteenth Amendment alone without invocation of the First Amendment. Shelton v. Tucker, 364 U. S. 479 (1960)

[26]396 U.S. 346, 362 to 363 (1970).

B. The voter is rendered wholly ineffective by exclusion of the party from the ballot.

The thrust of the constitutional question is do ALL qualified voters in Texas have the right to equal protection of the law in their participation in the electoral process? The right to vote was long ago defined as a fundamental political right.[27] The right to exercise the franchise includes the right to cast one's vote effectively, whether the effectiveness be measured quantitatively[28] or qualitatively.[29] It is axiomatic under recent Supreme Court decisions that the fundamental interests involved in voting rights are to be protected from encumbrances other than those necessary to serve a compelling governmental interest.[30]

This exclusion from ballot position and the resulting limitation on the opportunity to compete for the votes summarily prevents participation by a minority party under the provisions of the Presidential Election Campaign Fund Act. The discrimination surpasses the local control and permeates the 1976 Presidential Election Campaign.

C. The intentional discrimination vitiates State purpose.

Under Art. 13.45 (2) of the Texas Election Code, candidates for nomination by minority parties are required to secure the execution of a petition under oath before a notary public by qualified voters who have not voted in another party primary or participated in a party convention during that voting year.

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[27]Yick Wo v. Hopkins, 118 U. S. 356
[28]Reynolds v. Sims, 377 U. S. 533
[29]Williams v. Rhodes, 393 U.S. 23
[30]Kramer v. Union Free School District 395 U. S. 621, 628; Williams v. Rhodes, supra; Harper v. Virginia Board of Elections, 383 U. S. 663.
[31]Section 9001 Internal Revenue Act of 1971 amending 26 U.S.C. (1954)

These petitions must be signed within a severly limited period of 55 days in an exact detailed form prescribed by the statute and must be paid for in full by the members of the minority party. The petition cannot be circulated until after the party primary day. There is no right of absolute voting.[32] Categorically, the number of persons available to sign this petition is radically limited to those persons who are willing to abandon all other participation in the nomination process because of the prohibition against cross-signing with criminal sanctions for dual participation. The voter and the candidate for nomination in the major party primary participates in the luxury of absentee voting during a period of 60 days by mail for persons outside of the county and 20 days in person prior to the first primary and an additional 30 days until the second primary for a total of ninety (90) voting days, more or less. The party primary and second primary are paid for at expense of all taxpayers. The nominees of the major political parties still have available for their personal campaigns their own monies and contributions to defeat the third party candidate who has not yet financially recovered from the cost of the nominating process. The minority party voter and candidate must evidence minimal support by notarized petitions which actually constitute sworn omissions of such participation in any other party primary or conventions during that voting year. The petition necessitates expensive printing, duplicitious distribution and exhaustive efforts to approach the voters, secure the name, address, registration number and administer the oath and then affix the notary. By contrast, the

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[32]cf. Jenness v. Fortson, 403 U. S. 431 allowing 180 days for circulating petitions with cross-signing by all voters and simultaneous nominations for all candidates.

major party primary participants were welcomed by his party associates into an air-conditioned public building and furnished printed ballots or elaborate voting machines, all at public expense. The well-paid-workers used state supplies to note the names of voters who were not required to sign an affidavit nor was there any charge for a notary. The total cost of each county primary was the basis for the computation of the 5% bonus to the simultaneously elected Party County Chairman. Can there be any question that this "selective method" of payment by the State for the nomination processes for particular political parties only is not a denial of due process and equal protection of the law?[33]

Does not the State interest, if any, in the nomination process include the protection of the votes of all of its qualified citizens and the nomination by the majority of all of the qualified voters of the candidate of their choice? Or does the State of Texas limit the voter to vote for or against a candidate of a major political party to have his votes counted? Is a write-in vote for President meaningful participation contemplated by this Court in *Carrington v. Rash,*[34] or, is this exclusion from ballot position the "fencing out" proscribed by *Carrington v. Rash.*[35]

II.

The Primary Financing Law of 1972 has as its obvious purpose the payment of public tax funds to a political party.

Four special sessions of the Texas Legislature in 1972, in an otherwise off-year with no legislative session, provoked sev-

[33]cf. Presidential Election Campaign Act makes statutory provision for limited reimbursement to minority parties.
[34]380 U. S. 89.
[35]380 U. S. at 94.

eral unconstitutional eruptions, not the least of which was the (McKool-Stroud) Primary Financing Law of 1972.[36] This Court struck down[37] the horrendous filing fees[38] which had long served the Democratic establishment as the exclusionary bar against unorthodox candidates. During the Second Special Session in March, 1972, after the close of the filings by candidates for nomination under party labels and the alignment of political power evidenced by such filing, the Democratic-controlled Legislature rewarded the Party faithful with the Primary Financing Law to adequately compensate those participating in the Republican and Democratic party primaries.[39] In February, the American Party, Raza Unida Party, Texas New Party, and Texas Socialist Workers Party had filed with the Secretary of State their certified lists of candidates for nomination under party label.[40] The (Democratic) Party promptly responded by statutorily confirming its control by the enactment of the Primary Financing Law. The only notable difference in the Primary Financing Law from filing fees is the magnitude of the expenditure of public tax funds to the Democratic and Republican political parties.[41]

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[36]V.A.C.S. Election Art. 13.08 c-1 Appendix A. p. A-8.

[37]Bullock v. Carter, 405 U. S. 134, and later Johnston v. Luna (D. C. N.D. Tex. 1972) 338 F. Supp. 335, striking down yet another unconstitutional filing fee Act of the Texas Legislature. (V.A.C.S. Election Code, Art. 13.08 (5) thru (7), of First Special Session 1972.

[38]Art. 13.07a, 13.08, 13.08a, 13.15 and 13.16 of the Texas Election Code Ann. (1967).

[39]V.A.C.S. Election Art. 13.08 c-1;

[40]V.A.C.S. Election Art. 13.12 (3) required filing by all candidates to be certified to the Secretary of State in February.

[41]V.A.C.S. Election Art. 13.08 c-1 (4) (a) attempted to adequately finance the Republican and Democratic primaries by the appropriation of $2,150,000.00 but the actual cost submitted to the Fourth Special Session of the Legislature (1972) required additional appro-

A. The withholding of nominating financing from minority parties is invidious discrimination in direct proportion to the granting of financing to opposing political parties.

The mechanism of party primary elections is the creature of the state legislative choice and hence is "state action" within the meaning of the Fourteenth Amendment.[42] This same election code which "forced"[43] the Republican and Democratic parties to hold party primaries also "forced"[44] extraordinary costs on minority parties.[45] Therefore it follows that once the State undertook paying for the opportunity of the Democrats and Republicans to participate in the nominating process[46] then the State cannot discriminate against all other voters by imposing the costs of nomination directly on those voters.[47]

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priations exceeding a total of $3,000,000.00 to finance on a cost-plus basis the first and second (run-off) Democratic primaries and the first and second (run-off) Republican primaries; which $3,000,000.00 is in addition to the time and money spent by the governmental agencies such as the County Clerk in holding of absentee balloting and receiving certification of filing for county-wide offices and the certification of the votes effecting nomination.

[42]Gray v. Sanders, 372 U. S. 368.

[43]V.A.C.S. Elections Art. 13.02.

[44]V.A.C.S. Elections Art. 13:45 (2)

[45]The statutorily imposed costs of the sworn registration at the conventions supplemented by notarized petitions is easily estimated considering 23,000 signatures or 12,000 sheets printed for 20 signatures each, including the name, address, registration number and date, together with the oath and multiple notary certificate at the statutory notary fee (V.A.C.S. Art. 3945 requiring charge for affixing notary) of 50¢ per signature; costs of distribution and costs of collecting and filing of petitions.

[46]The nominating process is an intregal part of the electoral process and must pass constitutional muster against the charges of discrimination or abridgement of the right to vote; Moore v. Ogilvie, 394 U. S. 814, 818.

[47]The placing of even a minimal price on the exercise of the right to vote constituted an invidious discrimination. Harper v. Virginia Board of Elections, 383 U. S. 663.

B. The Primary Financing Law finances political purpose only.

The Primary Financing Law was obviously intentional discrimination because it was an indisputable fact that only the Democratic and Republican party primaries could possibly qualify for the cost-plus 5% participation in the allotment of public tax funds which were paid directly to the political party.

The Election Code does not require any signatures on petitions by either of the major political parties who cast more than 2% (but less than 200,000 votes) of the vote for their gubernatorial candidate in the next preceding general election whether such party should determine to nominate by convention[48] or by primary election.

Furthermore, should that political party be so fortunate as to have cast more than 200,000 votes, the party-primary shall be paid for by the state to the political parties on a basis of total expenses plus 5% for the County Chairman of that political party. But, woe be to that group of new transient citizens recently transported to the State of Texas or the newly enfranchised 18 year old voters, or members of political parties in other states (which party might even in some instances constitute a major political party) *which did not have a gubernatorial candidate in Texas who received 2% of the vote in the next preceding gubernatorial election;* for in each of these instances, these political groups *if* they can successfully organize on a State-wide basis at least 12 months prior to the next general election (and fulfill all other requirements) will be required to entirely finance the nomination of any candidate and then

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[48]V.A.C.S. Election Art 13.45 (1) Parties receiving more than two percent of vote for governor but less than 200,000.

will be required to furnish a minimum number of notarized signatures to petitions to compel the names of the nominees to appear on the general election ballot. The exclusionary concept of the Texas Election Code is thus financially re-dedicated to the control by the Democratic Party. The Primary Financing Law of 1972 is analagous to the unconstitutional statutory filing-fee system which denied equal protection of the laws because without providing a reasonable alternative means of access to the ballot, it utilized the criterion of the ability to pay as a condition to having the candidate's names placed on the ballot in the nominating procedure.[49]

A citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction. A state law authorizing multi-million dollar payments to preferred political parties and withholding all payments from opposing political parties unreasonably restricts the right to vote by granting the right to vote to some citizens and denying the franchise to other citizens who desire to vote for a candidate of the "other" party. This unreasonable burden on the right to vote is constitutionally impermissible.[50]

The statutory requirements for a minority party to nominate by convention with supplemental petitions were additionally burdened by the resulting discriminatory payment from public tax funds to the Democratic political party and the Republican political party. This use of public tax funds was not for any state reasonable use. This cost plus primary payment authorized by the Primary Financing Law was a direct reward to the party faithful insuring their participation in the Democratic or

[49]Bullock v. Carter, 405 U. S. 134.
[50]Dunn v. Blumstein, 405 U. S. 330.

Republican party primaries. The absence of provision for disbursements through governmental channels for all party nominating procedures evidences the invidious discrimination of direct payment to those registering as Democrat or Republican by participation in the party primary. This obvious, capricous and invidious use of public tax funds to encourage political party participation and to exclude minority parties is challenged by Appellant as violative of the due process and equal protection clauses of the Fourteenth Amendment.

CONCLUSION

Appellant urges the Court to reverse the decision of the lower Court and find V.A.C.S. Election Art. 13.45 to be unconstitutional in its entirety and to enjoin the State of Texas from the enforcement of the requirements of Art. 13.45 against minority parties. Appellant further urges the Court to find V.A.C.S. Election Art. 13.08 c-1 known as the [McKool-Stroud] Primary Financing Law of 1972 to be unconstitutional; and that the State of Texas be ordered to demand the immediate repayment of all state tax funds to the Comptroller of the State of Texas by the Democratic political party and by the Republican political party.

Respectfully submitted,

GLORIA TANNER SVANAS,
418 West Fourth Street,
Odessa, Texas 79761,
Attorney for American Party of Texas.

CERTIFICATE OF SERVICE

I, GLORIA TANNER SVANAS, a member of the Bar of the Supreme Court of the United States and the attorney for the AMERICAN PARTY OF TEXAS, Appellant herein, hereby certify that on the 19th day of April, 1973, I have mailed three copies of the foregoing Brief of Appellant to Counsel at the following addresses: The Honorable John Hill, Attorney General of Texas, P. O. Box 12548, Capitol Station, Austin, Texas, 78711, attorney for Appellee, State of Texas; Mr. Robert Hainsworth, 3710 Holman, Houston, Texas 77004, attorney for Appellent, Robert Hainsworth; Mr. Michael Anthony Maness, Seventh Floor, 711 Main Street, Houston, Texas 77002, attorney for Appellant, Texas New Party and Texas Socialist Workers Party; Mr. Laurel N. Dunn, 2811 Old Robinson Road, Waco, Texas, 76700, attorney for Appellant, Laurel N. Dunn.

I certify that all parties required to be served have been served.

Gloria Tanner Svanas

APPENDIX

APPENDIX A

AMENDMENTS TO THE UNITED STATES CONSTITUTION

AMENDMENT I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Vol. 9 Vernon's Ann. Civ. St. Election Code

Art. 13.12 Application for place on ballot; filing; deadline; extension; withdrawal; notice

The application to have the name of any person affiliating with any party placed on the official ballot for a general primary as a candidate for the nomination of such party for any office for which a nomination may be made at such primary shall be governed by the following.

* * * * *

2. The application shall be filed with the state chairman

in the case of statewide offices, with the county chairman of each county which is included wholly or partially within the district in the case of district offices, and with the county chairman of the particular county in the case of county and precinct offices; provided, however, that applications of candidates for justice of the Court of Civil Appeals shall be filed with the state chairman. Except as provided in Paragraph 2a of this section, the application shall be filed not later than 6 p.m. on the first Monday in February preceding such primary. Subsec. 2 amended by Acts 1967, 60th Leg., p. 1912, ch. 723, § 45, eff. Aug. 28, 1967; Acts 1969, 61st Leg., p. 2662, ch. 878, § 30, eff. Sept. 1, 1969.

2a. The filing deadline stated in Paragraph 2 of this section shall be extended for the particular party primary and office involved, as provided in this paragraph: (i) if between the fifth day preceding the first Monday in February and the 30th day preceding the general primary, both dates included, any candidate for an office dies, if the candidate had complied with all prerequisites for having his name placed on the ballot which he was required to perform by the date of his death; (ii) if between the first Monday in February and the 30th day preceding the general primary, both dates included, any candidate who is seeking nomination to an office which he then holds withdraws or is declared ineligible for election to that office; or (iii) if between the first Monday in February and the 30th day preceding the general primary, both dates included, the only candidate who has filed for a partciular office in the primary of that party withdraws or is declared ineligible. In the enumerated circumstances, the name of the deceased, withdrawn, or ineligible candidate shall not be printed on the ballot, and applications for that party's nomination for that office may be filed not later than 6 p.m. on the 15th day following the death, withdrawal, or declaration of ineligibility of the candidate; pro-

vided, however, that where the death, withdrawal, or declaration of ineligibility occurs less than 15 days before the 25th day preceding the primary, the deadline for filing shall be 6 p.m. on the 25th day preceding the primary. Notwithstanding the provisions of Paragraph 2b of this section, an application which is not received by the chairman until after 6 p.m. on the 25th day shall not be timely, and applications mailed but not actually received by that time shall not be accepted for filing. Further, notwithstanding the provisions of Section 186[1] or any other provision of this code, the full amount of the assessment or filing fee must be received by the chairman not later than 6 p.m. on the 25th day.

Subsec. 2a added by Acts 1967, 60th Leg., p. 1912, ch. 723, § 45, eff. Aug. 28, 1967. Amended by Acts 1969, 61st Leg., p. 2662, ch. 878, § 30, eff. Sept. 1, 1969.

2b. Except as otherwise provided in Paragraph 2a, an application filed under either Paragraph 2 or Paragraph 2a of this section shall be considered filed if sent to the proper chairman at his post-office address by registered or certified mail from any point in this state not later than the day before the filing deadline, as shown by the postmark. Any application not received by the chairman before the deadline does not comply with this law unless it has been mailed by registered or certified mail as herein provided, and it shall not be sufficient to send the application by any other type of mail unless it is delivered before the deadline.

2c. A candidate may withdraw by filing with the chairman or chairmen with whom his application was filed, a signed request, duly acknowledged by him, that his name not be printed on the primary ballot. Whenever a filing period is extended by the death, withdrawal, or ineligibility of a candidate, each coun-

[1] Article 13.08.

ty chairman with whom the candidate's application was filed shall give notice of the opening of the filing and of the deadline to file by mailing or delivering a news release within 48 hours after his first knowledge of the death, withdrawal, or ineligibility, to each newspaper, as defined in Article 28a, Vernon's Texas Civil Statutes, as amended, which is published in the county. Where the application was filed with the state chairman, he shall give notice in like manner by mailing or delivering the release to at least three daily newspapers which maintain news representatives in the State Capitol. The failure of a county chairman or state chairman to comply with this requirement shall be ground for his removal from office by the committee of which he is chairman.

2d. A candidate shall not be permitted to withdraw during the period of 20 days preceding the general primary. If after the 30th day preceding the general primary a candidate dies or an incumbent or an unopposed candidate withdraws or is declared ineligible, the procedure detailed in Section 104 of this code[2] shall be followed. Except as provided in that section, the name of a deceased, withdrawn, or ineligible candidate shall not be printed on the ballot.

Subsecs. 2b-2d added by Acts 1969, 61st Leg., p. 2662, ch. 878, § 30, eff. Sept. 1, 1969.

3. Within ten days after the first Monday in February, the state chairman shall file with the Secretary of State, and each county chairman shall file with the county clerk of his county a list of the names of all candidates, arranged by office for which nomination is sought, whose applications have been timely received. In like manner each chairman shall file, within three days after any extended filing deadline under Paragraph 2a of this section, a supplemental list of candidates whose

[2] Article 8.22.

applications were timely received after the original list was prepared. Each county chairman shall forward to the chairman of the state executive committee a copy of each list which he files with the county clerk.

Subsec. 3 amended by Acts 1967, 60th Leg., p. 1913, ch. 723, § 45, eff. Aug. 28, 1967.

Vol. 9 Vernon's Ann. Civ. St. Election Code (1972-73 Suppl. pages 149-150) Texas Election Code.

Art. 13.45 Nominations by parties under two hundred thousand votes

Subdivision 1. Parties receiving more than two percent of vote for governor. Any political party whose nominee for Governor in the last preceding general election received as many as two percent of the total votes cast for Governor and less than two hundred thousand votes, may nominate candidates for the general election by primary elections held in accordance with the rules provided in this code for the primary elections of parties whose candidate for Governor received two hundred thousand or more votes at the last general election; or such party may nominate candidates for the general election by conventions as provided in Sections 224 and 225 of this code.[3]

Subdivision 2. Parties receiving less than two percent of vote for governor. Any political party whose nominee for governor received less than two percent of the total votes cast for governor in the last preceding general election, or any new party, or any previously existing party which did not have a nominee for governor in the last preceding general election, may also nominate candidates by conventions as provided in Sections 224 and 225,[4] but in order to have the names of its

[4] Articles 13.47 and 13.48.

[3] Articles 13.47 and 13.48.

nominees printed on the general election ballot there must be filed with the secretary of state, within 20 days after the date for holding the party's state convention, the list of participants in precinct conventions held by the party in accordance with Sections 222a and 224 of this code,[5] signed and certified by the temporary chairman of each respective precinct convention, listing the names, addresses (including street address or post-office address), and registration certificate numbers of qualified voters attending such precinct conventions in an aggregate number of at least one percent of the total votes cast for governor at the last preceding general election; or if the number of qualified voters attending the precinct conventions is less than that number, there must be filed along with the precinct lists a petition requesting that the names of the party's nominees be printed on the general election ballot, signed by a sufficient number of additional qualified voters to make a combined total of at least one percent of the total votes cast for governor at the last general election. The address and registration certificate number of each signer shall be shown on the petition. No person who, during that voting year, has voted at any primary election or participated in any convention of any other party shall be eligible to sign the petition. To each person who signs the petition there shall be administered the following oath, which shall be reduced to writing and attached to the petition: "I know the contents of the foregoing petition, requesting that the names of the nominees of the .....Party be printed on the ballot for the next general election. I am a qualified voter at the next general election under the constitution and laws in force, and during the current voting year I have not voted in any primary election or participated in any convention held by any other political party." The petition may be in multiple parts. One certificate of the officer administering the oath may be so made as to

[5] Articles 13.45a and 13.47.

apply to all to whom it was administered. The petition may not be circulated for signatures until after the date set by Section 181 of this code for the general primary election. Any signatures obtained on or before that date are void. Any person who signs a petition after having voted in a primary election or participated in a convention of any other party during the same voting year is guilty of a misdemeanor and upon conviction shall be fined not less than $100 or more than $500.

The chairman of the state executive committee shall be responsible for forwarding the precinct lists and petition to the secretary of state.

At the time the secretary of state makes his certifications to the county clerks as provided in Section 3 of this code,[6] he shall also certify to the county clerks the names of parties subject to this subdivision which have complied with its requirements, and the county clerks shall not place on the ballot the names of any nominees of such a party which have been certified directly to them unless the secretary of state certifies that the party has complied with these requirements."

Amended by Acts 1967, 60th Leg., p. 1921, ch. 723, § 59, eff. Aug. 28, 1967, Subd. 2 amended by Acts 1969, 61st Leg., p. 2662, ch. 878, § 35, eff. Sept. 1, 1969.

Vol. 9 Vernon's Ann. Civ. St. Election Code (1972-73 Suppl. pages 170-171) Texas Election Code

Art. 13.47 Conventions of parties not required to hold primary

Political parties which are not required by law to make nominations by primary election may make nominations by conventions as provided herein.

Nominations for statewide offices shall be made at a state convention, which shall be held on the second Saturday in June

[6] Article 1.03.

of the election year, and which shall be composed of delegates selected in the various counties at county conventions held on the second Saturday in May. The county conventions shall be composed of delegates from the genreal election precincts of such counties elected therein at precinct conventions held in such precinct on the first Saturday in May.

Nominations for district offices of districts composed of more than one county or part thereof shall be made at district conventions held on the third Saturday in May of the election year, composed of delegates elected thereto from the counties having territory within the district, at the county conventions held on the second Saturday in May.

Nominations for county and precinct offices and for district offices of districts composed of only one county or part of one county shall be made at the county conventions held on the second Saturday in May.

The state executive committee of each party shall determine the formula by which the number of delegates to the county, district, and state conventions of that party shall be governed, and shall also formulate such rules as it deems desirable with respect to participation of delegates at a county convention in the nomination of candidates for precinct offices and for district offices of districts composed of only a part of the county, and in the election of delegates to a district convention where only a part of the county is included in the district.

Amended by Acts 1967, 60th Leg., p. 1923, ch. 723, § 61, eff. Aug. 28, 1967.

Vol. 9 Vernon's Ann. Civ. St. Election Code (1972-73 Suppl. pages 173-174) Texas Election Code

Art. 13.08c—1. Primary financing law of 1972

Section 1. *Purpose.* The invalidation by federal court deci-

sions of the statutory method of financing primary elections in this State necessitates legislative action to provide a solution to the impasse facing political parties which cast more than 200,000 votes for Governor in the last preceding general election, in that the existing law requires that their nominations for the general election be made in primary elections but they are left without adequate means to finance the primaries. The purpose of this Act is to provide a temporary solution to the impasse by enacting provisions relating to the conduct and financing of primary elections for the year 1972.

Sec. 2. *Conduct of the Primary Elections.* Nominations for the general election to be held on November 7, 1972, shall be made in the manner provided in the Texas Election Code. The primary elections held by a political party pursuant to Sections 180 and 181, Texas Election Code (Articles 13.02 and 13.03, Vernon's Texas Election Code), shall be conducted through the party's state executive committee and county executive committees in accordance with the procedures detailed in the Election Code, with the following modifications and clarifications:

(1) In order for a candidate to have his name placed on the ballot for the general primary election, he must have either paid a filing fee or filed a nominating petition in compliance with the directives issued by the Secretary of State following the decision in Johnston v. Bullock, et al., CA 3-5373-C, United States District Court for the Northern District of Texas, Dallas Division,[7] which declared the statutory system of fees and assessments to be invalid.

(2) The fees paid to the county chairman pursuant to the directives of the Secretary of State and any contributions made to the county chairman or the county executive committee for the specific purpose of helping defray the costs of the primary

[7] See Johnston v. Luna (D.C. 1972) 338 F. Supp. 355.

elections shall be deposited to the credit of the primary fund referred to in Section 196 (Article 13.18) of the Election Code and shall be applied to payment of the costs of the primary elections. The county chairman and the committee may also use any other available funds toward defraying the costs. The remaining costs incurred after the effective date of this Act shall be borne by the State out of the appropriation made for that purpose in Section 4 of this Act, in accordance with the procedures outlined in Section 3 of this Act, or out of supplemental appropriations made at subsequent sessions of the Legislature if the original appropriation is insufficient.

(3) In each county in which voting machines or an electronic voting system has been adopted, the county Commissioners Court shall permit the county-owned voting machines or voting equipment to be used for the primary elections, including the conduct of absentee voting for the elections, at a charge for use at each election not exceeding $16 per unit for voting machines adopted under Section 79 of the Election Code,[8] and not exceeding $3 per unit for voting equipment adopted under Section 80 of the Election Code.[9] The maximum amount fixed in this Act includes the lease price for use of the unit, and also the charge for its preparation and maintenance if the county provides these services. The county is entitled to reimbursement for the cost of transporting the machines or equipment to and from the polling places if the county provides this service. Where voting is by an electronic voting system, the county may not charge for use of county-owned automatic tabulating equipment at the central counting station, but all actual expenditures incidental to operation of the central counting station in counting the ballots are payable out of the primary fund.

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[8] Article 7.14.
[9] Article 7.15.

(4) All expenses of th county clerk in conducting absentee voting in the primary elctions, including the employment of additional deputies whereнecessary, shall be paid by the county. A county is not entitld to reimbursement for any expenditure of county funds in conection with the conduct of absentee voting or any other servces rendered by the county clerk in the primary elections, excpt for voting machines and/or punchcard units used in conducing the absentee voting.

(5) The total combind compensation paid to the county chairman and the secretay of the county executive committee (where the committee hasnamed a secretary) and to any office personnel employed to asist in the performance of the duties placed upon the chairma, the secretary, and the members of the county executive committee shall not exceed five percent of the amount actually spnt in holding the primary elections for the year, exclusive of te compensation paid to these officers and employees.

(6) Charges for officeexpenses shall not be allowed for a period extending beyond the 10th day after the date of the last primary held by the arty.

(7) The Secretary of State is authorized to promulgate uniform rules in regard o the maximum number of election clerks who may be compnsated for their services at a polling place, taking into accoun the number of registered voters in the election precinct, the number of votes cast in the precinct in the party's primary eletions in 1970, the method of voting, and other relevant factor The Secretary of State must allow compensation for the presiding judge, alternate judge, and at least one clerk for eah precinct. If the Secretary of State promulgate rules on this subject, he shall furnish a copy of the rules to each county hairman at least 10 days before the election to which the rule apply. The Secretary of State may

allow compensation for clerks employed in excess of the applicable limit set by the rules if he finds that employment of additional clerks was justified by special circumstances existing in the precinct.

(8) The county chairman is not required to file the financial report provided for in Subdivision 5 of Section 196 (Article 13.18) of the Election Code, but he shall account for the primary fund in the manner provided in Section 3 of this Act.

(9) The Secretary of State shall not approve any expenditure of state funds to any county organization that practices discrimination based on race, sex, age, creed, or national origin. The State Attorney General shall be specifically responsible for the enforcement of this section.

Sec. 3. *State Financing.* (a) As soon as possible after this Act takes effect, the Secretary of State shall obtain from each county chairman of each political party in the state which is holding primary elections in 1972 a sworn itemized estimate of the costs for conducting the first primary election in his county, showing the costs incurred or to be incurred after the effective date, together with a sworn statement of the filing fees and contributions received by the chairman, for such primary election to and including the date of such sworn statement. The Secretary of State shall review the estimate and shall notify the chairman of any items which he has disallowed as unauthorized expneditures. Expenditures may be allowed only for those purposes which are properly payable out of the primary fund under existing law as established by the statutes and court decisions of this State. The Secretary of State shall subtract from the approved estimated any amount of the fees and contributions received by the chairman remaining over and above legitimate expenses incurred, before the effective date of this Act, for the conduct and financing of the Primary

Elections for the year 1972, and shall certify to the Comptroller of Public Accounts the net estimated amount which is payable out of State funds, together with the Secretary of State's calculation of three-fourths of that amount. The Comptroller forthwith shall issue a warrant to the chairman for three-fourths of the certified amount.

(b) In each county in which a runoff primary is necessary, within 10 days after the first primary the county chairman shall submit to the Secretary of State a sworn itemized estimate of the costs of the runoff primary incurred or to be incurred after the effective date of this Act. As in the case of the first primary, the Secretary of State shall notify the chairman of items which he disallows, and shall certify to the Comptroller the approved estimated amount which is payable out of State funds, together with the Secretary of State's calculation of three-fourths of that amount; and the Comptroller shall issue a warrant to the chairman for three-fourths of the certified amount.

(c) Within 20 days after the date of the runoff primary, the county chairman shall submit to the Secretary of State a sworn itemized report of the actual costs, filing fees collected and contributions received, of the primary election or elections (as the case may be) held by this party in his county, showing the costs incurred before the effective date of this Act separately from those incurred after the effective date. If the actual expenditure for an item exceeded the estimated amount, the chairman shall submit an explanation of the reason for the increased expenditure, and the Secretary of State shall allow the increase if good cause is shown. The Secretary of State shall certify to the Comptroller the difference between the total amount payable out of State funds and the amount which has already been transmitted to the chairman, and the Comptroller shall issue a warrant to the chairman in the amount certified. If

the total amount of the fees and contributions in excess of those previously expended for expenses which would have been payable if incurred after the effective date of this Act, and the payments from the State exceeds the actual expenditures incurred after the effective date of this Act, the chairman shall refund the difference to the State, in the form of a check made payable to the Secretary of State. The Secretary of State shall deposit the check in the State Treasury to the credit of the appropriation account established under Subsection (a) of Section 4 of this Act.

(d) Each county chairman shall deposit to the credit of the primary fund all warrants received by him under this section. Expenses incurred by or on behalf of the county executive committee for the conduct of the primary elections shall be paid from the primary fund, in the manner authorized by the committee.

(e) The county chairman is responsible for payment of claims for primary election expenses, and the State is not liable to any claimant for failure of the county chairman to pay a claim.

(f) The Secretary of State shall prescribe and shall furnish to the county chairmen the forms which they are to use in submitting their statements and reports to him.

(g) Wherever the word "county chairman" is used in this Act, it shall apply to the county chairman or his successor in office, and such county chairman shall not be personally liable except for the misapplication of funds.

(h) In any case in which the Secretary of State disallows an item of expenditure under Subsection (a) or (b) of this section, or refuses to allow an increase under Subsection (c) of this section, the county chairman may appeal to a district

court of Travis county by filing a petition within 20 days after the date the notification is received from the Secretary of State, and the district court shall allow such expenditures as are properly payable out of the primary fund under existing law. Any item not certified to the comptroller of public accounts for payment within 10 days after its submission to the Secretary of State may be considered disallowed for this purpose. Judicial review shall be by trial de novo as are appeals from the justice court to the county court.

Sec. 4. *Appropriations.* (a) There is appropriated from the general revenue fund to the office of the Secretary of State the sum of $2,150,000 for the purpose of making payments to county chairmen as provided in Sections 2 and 3 of this Act. All refunds deposited to the credit of this appropriation account are appropriated for the same purpose as designated for the original appropriation.

(b) To enable the Secretary of State to finance the additional duties which this Act places upon him, three is appropriated from the general revenue fund to the office of the Secretary of State the sum of $20,000, which shall be placed to the credit of the appropriation accounts established under Items 6 and 8 of the appropriation made by Chapter 1047, Acts of the 62nd Legislature, Regular Session, 1971, to the office of the Secretary of State for the fiscal year ending August 31, 1972, in the following amounts:

Item 6 (seasonal and part-time help)	$ 6,000
Item 8 (consumable supplies and materials, current and recurring operating expense, etc.)	14,000

Sec. 4-A. *Severability.* If any provision of this Act or the applicable thereof to any person or circumstance is held in-

valid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

Acts 1972, 62nd Leg., 2nd C.S., p. ....., ch. 2, §§ 1 to 4-A, eff. April 4, 1972.

Vol. 9 Vernon's Ann. Civ. St. Election Code (1972-73 Suppl. pages 143-146).

APPENDIX B

SUPREME COURT OF THE UNITED STATES

No. A-325

American Party of Texas, et al.,
v.
Bob Bullock, Secretary of State of Texas.
Application for Temporary Restraining Order.

[October 5, 1972]

MR. JUSTICE DOUGLAS, dissenting.

The American Party, seeking to get on the Texas ballot for this year's election, brought an action which asked a three-judge federal court to hold provisions of the Texas election laws unconstitutional.

Texas has four methods of nominating candidates.

First, those whose gubernatorial candidates polled more than 200,000 votes in the last general election may be nominated through primaries. Election Code, Art. 13.02. Second, those whose party candidates polled less than 200,000 votes but more than 2% of the total votes cast for governor may be nominated by primaries or by nominating conventions. Third, those whose party candidates polled less than 2% of the total gubernatorial vote and those whose party did not have a nominee for governor on the last general election may be nominated by convention only or by fulfilling the requirements of Art. 13.45(2) of the Election Code. Fourth, nonpartisan independent candidates may appear on the ballot after meeting the requirements of Art. 13.50 of the Election Code.

The American Party falls in the third category. In order

to gets its nominee printed on the ballot it must meet the following requirements:

It must by the previous September declare its intention to nominate by convention. That entails a state-wide party organization with an executive committee. It also requires the filing with the Secretary of State by February of the names of the candidates; it requires the filing of party rules by March. It requires the holding of precinct conventions on the day of the primary and the holding of county conventions the following week and a state convention on a day certain.

The American Party must in addition do the following:

(1) It must furnish a list of participants in each precinct convention with the names, addresses and registration certificate numbers of qualified voters attending such conventions. The names on the list must total at least 1% of the total votes cast for governor at the last preceding general election.

(2) If the number of qualified voters attending the precinct conventions is less than 1%, there must be filed a petition requesting that the names of the nominees be printed on the election ballot, signed by a sufficient number of additional qualified voters to make a combined total of at least 1% of the total votes cast for governor in the last election.

(3) No person who during the voting year voted at any primary election or participated in any convention of any other party may attend the minority party convention or sign the petition. If he does, he is subject to criminal penalties.

(4) The petition may not be circulated until after the date set for the holding of the major parties primaries. Signatures must be certified before 20 days after the date of the party's convention, which in 1972 gave it approximately 53 days to gather signatures.

(5) Each person who signs a petition must be administered an oath before a notary public at the time he signs.

This election scheme is not as severe or oppressive as the one we condemned in *Williams v. Rhodes*, 393 U.S. 23; nor is it as benign as the one approved in *Jenness v. Fortson*, 403 U.S. 431.

While Texas requires only 1% of the voters for governor to endorse the new party, that requirement must be met by obtaining signatures of those attending precinct conventions, supplemented, if need be, by signatures obtained after the primaries. But all cross-over signing is barred and it is supported by criminal sanctions. Moreover, the supplemental signatures can be obtained only after the major parties have held their primaries. And only a 55-day period is available for obtaining the necessary signatures.

While the requirement of 1% of the total vote for governor may be less than Georgia's requirement of 5% of those eligible to vote in the last election for the filling of the office the candidate is seeking, the Texas machinery for launching a minority party is almost as cumbersome and involved as the one we struck down in *Williams v. Rhodes*.

The minority party must be state-wide even though its appeal may be essentially to urban voters or to rural voters, as the case may be. That requirement did not appear in Georgia's scheme.

In Georgia, 180 days was allowed for circulating a nominating petition; in Texas, less than 60 days.

In Georgia the minority party had to meet the same deadline as did candidates running in the primaries of the regular parties. In Texas the regular parties first have their primaries; only then can a minority party solicit signatures for its can-

didates. Moreover, no one who voted in a primary is eligible to sign the petition for the minority party.

The minority party therefore must draw its support from the ranks of those who were either unwilling or unable to vote in the primaries of the established parties.

The minority party therefore cannot compete with the regular parties; it must be content with the left-overs to get on the ballot.

We said in *Jenness v. Fortson, supra,* at 438, "Georgia's election laws, unlike Ohio's, do not operate to freeze the status quo." Texas, though not as severe as Ohio, works in that direction. It therefore seems to me, at least prima facie, to impose an invidious discrimination on the unorthodox political group.

Perhaps full argument would dispel these doubts. But they are so strong that I would grant the requested stay so that candidates for the American Party may get on the Texas ballot for next month's presidential election. To do so it must be certified by the Secretary no later than October 6th. We cannot possibly decide the merits by that date. But if the American Party is on the ballot, the voting and associational rights which we have been alert to protect will be honored; and if meanwhile the merits are reached and we affirm the three-judge court, holding the Texas scheme constitutional, the ballots will not be counted. That was the way Justice Black avoided the dilemma in a Florida case; and I would follow his course here.*

* See Davis v. Adams, 400 U. S. 1203.

APPENDIX C

Art. 13.45 Nominations by parties under 200,000 votes

Any political party whose nominee for Governor in the last preceding general election received less than two hundred thousand votes, or any new party, or any previously existing party which did not have a nominee for Governor in the last preceding general election, may nominate candidates for the general election:

(1) by primary elections held in accordance with the rules provided in this Code for the primary elections of parties whose candidate for Governor received two hundred thousand or more votes at the last general election; or

(2) by nominating such candidates for the general election in conventions as provided in Sections 224 and 225 of this Code;[1] provided, however, that if the convention system be used, then the party must comply with the following qualifications for nomination:

(a) Such party must hold a state convention at the time and under conditions prescribed by law, composed of delegates from county conventions held in accordance with the law.

(b) It shall not be necessary that county conventions whose delegates comprise the state convention be held in all counties of the state, but such conventions must be held in not less than twenty counties comprising in the aggregate not less than twenty per cent of the population of the state.

(c) The chairman of the state executive committee of the party shall certify under oath to the Secretary of State that the conditions of this section have been complied with. Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 222; as amended Acts 1959, 56th Leg., p. 335, ch. 165, § 11; Acts 1963, 58th Leg., p. 1017, ch. 424, § 102.

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[1] Articles 13.47 and 13.48.

IN THE

Supreme Court of the United States

October Term, 1972

NO. 72-887

AMERICAN PARTY OF TEXAS, ET AL., *Appellants*

v.

BOB BULLOCK, *Appellee*

NO. 72-942

ROBERT HAINSWORTH, *Appellant*

v.

MARK WHITE, JR., Secretary of State of Texas, *Appellee*

On Appeal From The United States District Court For The Western District of Texas

---

BRIEF OF APPELLANT ON THE MERITS

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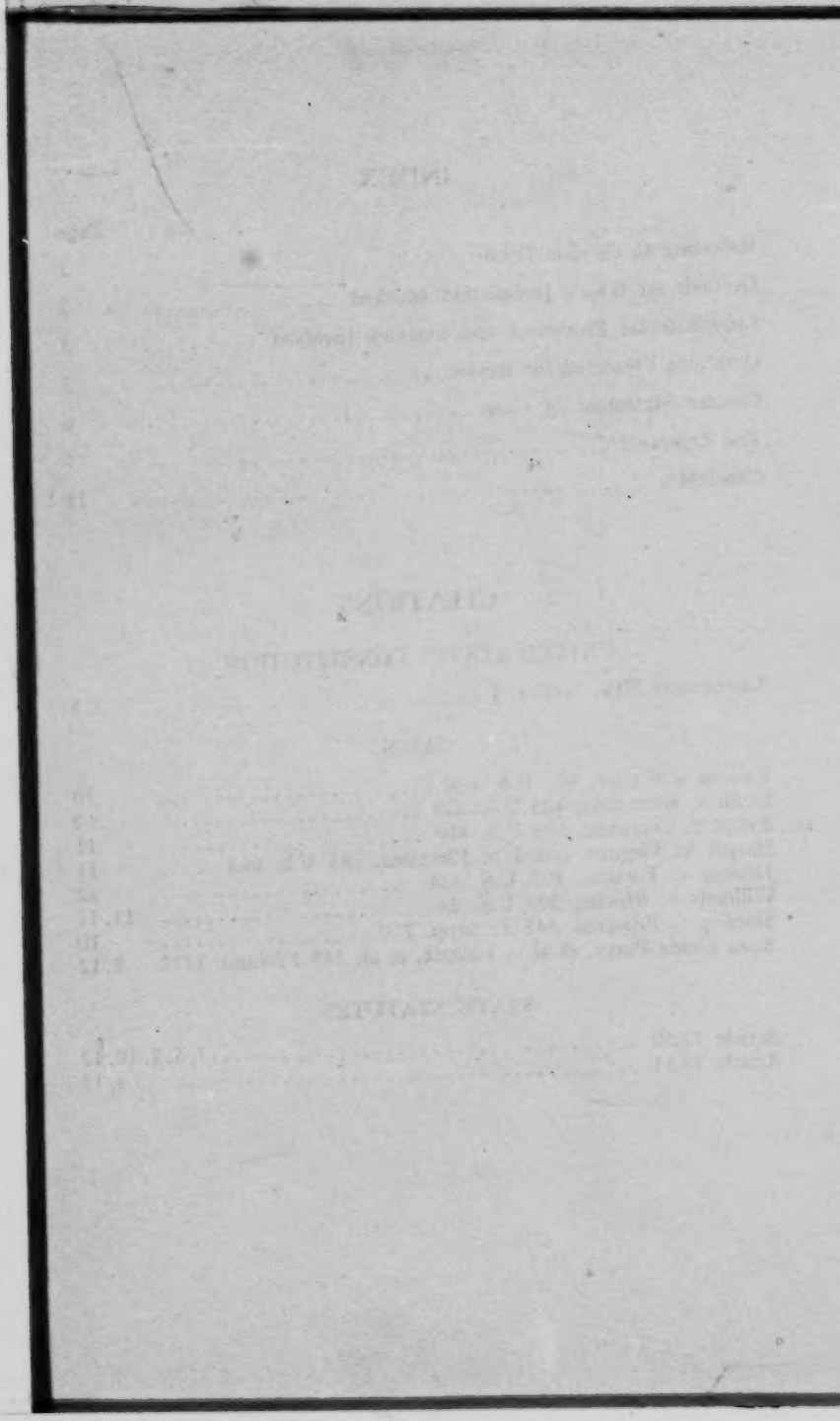

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BRIEF OF APPELLANT ON THE MERITS

TO THE HONORABLE SUPREME COURT:

The brief of the appellant, Robert Hainsworth, on the merits, in the above consolidated cases, follows:

REFERENCE TO OPINION BELOW

There was no individual opinion rendered by the Three-Judge Court in this case, but the Court below referred in its Order Denying Motion For Rehearing, to the opinion of the Court rendered in the consolidated cases of *Raza Unida Party, et al. v. Bob Bullock, et al.*, which is reported in 349 Fed. Supp. 1272; and the reference was "For the reasons fully discused in Part III and Part VII of our opinion in *Raza Unida Party v. Bullock, supra,* and based upon the authorities cited therein, this Court found that Article 13.50 of the Texas Election Code served a compelling state interest and was not violative of Equal Protection as applied to Plaintiff Robert W. Hainsworth. Memorandum Order and Judgment to this effect was entered on September 19, 1972."

GROUNDS ON WHICH JURISDICTION INVOKED

The jurisdiction of this Court is invoked pursuant to Title 28 U.S.C.A., Sections 1253, 2281, and 2101 (B).

The Memorandum Order and Judgment of the United States Distrit Court was dated and entered on the 19th day of September, 1972. The Order Denying Motion For Rehearing was dated and entered on the 3rd day of October, 1972. The Notice of Appeal to this Court was filed in the United States District Court for the Western District of Texas, Austin Division on November 2, 1972. The Record and Jurisdictional Statement was docketed in this Court on December 30, 1972- as Case No. 72-942. This Court noted probable jurisdiction on March 5, 1973, and consolidated this case with several other cases.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Constitutional provision involved is United States Constitution, Amendment XIV, Section 1, and the State Statute involved is Article 13.50 of the Texas Election Code, V.A.T.S., Vol. 9, pp. 504, 505.

UNITED STATES CONSTITUTION

Amendment XIV

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Art. 13.50 Non-partisan and independent candidates

The name of a nonpartisan or independent candidate may be printed on the official ballot in the column for independent candidates, after a written application signed by qualified voters addressed to the proper officer, as herein provided, and delivered to him within thirty days after the second primary election day, as follows:

If for an office to be voted for throughout the state, the application shall be signed by one per cent of the entire vote of the state cast for Governor at the last preceding general election, and shall be addressed to the Secretary of State.

If for a district office in a district composed of more than one county, the application shall be signed by three per cent of the entire vote cast for Governor in such district at the last preceding general election, and shall be addressed to the Secretary of State.

If for a district office in a district composed of only one county or part of one county, the application shall be signed by five per cent of the entire vote cast for Governor in such district at the last preceding general election, and shall be addressed to the Secretary of State.

If for a county office, the application shall be signed by five per cent of the entire vote cast for Governor in such county at the last preceding general election, and shall be addressed to the county judge.

If for a precinct office, the application shall be signed by five per cent of the entire vote cast for Governor in such precinct at the last preceding general election, and shall be addressed to the county judge.

Notwithstanding the foregoing provisions, the number of signatures required on an application for any district, county, or precinct office need not exceed five hundred.

No application shall contain the name of more than one candidate. No person shall sign the application of more than one candidate for the same office; and if any person signs the application of more than one candidate for the same office, the signature shall be void as to all such applications. No person shall sign such application unless he is a qualified voter, and no person who has voted at either the general primary election or the runoff primary election of any party shall sign an application in favor of

anyone for an office for which a nomination was made at either such primary election.

The application shall contain the following information with respect to each person signing it: his address and the number of his poll tax receipt or exemption certificate and the county of issuance; or if he is exempt from payment of a poll tax and not required to obtain an exemption certificate, the application shall so state.

Any person signing the application of an independent candidate may withdraw and annul his signature by delivering to the candidate and to the officer with whom the application is filed (or is to be filed, if not then filed), his written request, signed and duly acknowledged by him, that his signature be cancelled and annulled. The request must be delivered before the application is acted on, and not later than the day preceding the last day for filing the application. Upon such withdrawal, the person shall be free to sign the application of another candidate for the same office.

QUESTIONS PRESENTED FOR REVIEW

1. Does the State of Texas place a heavier burden on Independent candidates to get on the ballot than on other major political party candidates?

2. Whether Art. 13.50 Texas Election Code, V.A.T.S., violates the Constitution of the United States, Section 1, Amendment XIV, in such Article's provisions and requirements for an independent candidate to get name on general election ballot?

3. What is an appropriate measuring rod and guidelines for the State of Texas to observe in providing by

State Statute how an independent candidate can get his name on the general election ballot, within the framework of all constitutional safeguards?

CONCISE STATEMENT OF CASE

The petitioner in the Court below, and the appellant in the Supreme Court, endeavored to become an independent candidate for the office of State Representative, District 86, Harris County, Texas, in the general election held on November 7, 1972.

That the application to get the name of the petitioner on the ballot as an independent candidate was begun to be circulated on June 5, 1972, and within 30 days after the second primary day, on July 3, 1972, the petitioner brought the application to the office of the Secretary of State, with the signatures notarized as required by the Texas Election Code. That the petitioner met all qualifications to become an independent candidate for State Representative, District 86, except that he did not have signatures of qualified voters to his application numbering five per cent of the entire vote cast for Governor in such district at the last general election, nor five hundred signatures to his application. But the petitioner did have over three hundred signatures. That the petitioner presented a written request for an extension of time in which to obtain more signatures to his application, to the office of Secretary of State. (A. 36). (And see Exhibit "A"). (A. 45). That the petitioner was advised that the Secretary of State could not extend the time, and that the only way an extension could be secured was by petition to the Court and the obtaining of a Court Order. That the petitioner had on prior occasions endeavored to get his name on the ballot as an independent candidate, but did not

obtain enough signatures to his application, on prior occasions. That on July 3, 1972, the petitioner left for filing the application to get his name on the ballot as an independent candidate, together with his Consent to Become A Candidate, in the office of the Secretary of State. (A. 36).

Thereafter, the petitioner filed a verified Petition for Preliminary Injunction in the United States District Court for the Western District of Texas, challenging the constitutionality of Art 13.50 V.A.T.S. (A. 33-45).

That the Defendant in answer filed a Motion To Dismiss said action on several grounds (A. 46-49).

The Three-Judge Court in its Memorandum Order and Judgment found that Art. 13.50 served a compelling state interest and is not violative of Equal Protection as applied to this plaintiff. All relief sought by plaintiff was denied and the defendant's Motion, treated as one for summary judgment is granted. Petitioner filed a Motion for Rehearing. And the Three-Judge Court denied plaintiff's Motion for Rehearing, in its Order dated and entered the 3rd day of October, 1972.

THE ARGUMENT

1.

DOES THE STATE OF TEXAS PLACE A HEAVIER BURDEN ON INDEPENDENT CANDIDATES TO GET ON THE BALLOT THAN ON OTHER MAJOR POLITICAL PARTY CANDIDATES?

Some of the burdens, restrictions and impediments that are placed upon non-partisan and independent candidates by Art. 13.50, are set forth below:

I. Discriminations between district non-partisan or independent candidates: The per cent or number required of some district independent candidates is smaller than that required of others; three per cent for some, five per cent for others, dependent upon whether from one county or part of one county, or from more than one county. Also, this difference is noted: an independent candidate for the United States House of Representatives, and an independent candidate for State Representative in Harris County, Texas. That there are four Congressional Representative Districts in Harris County, and part of a fifth Congressional District. That there are twenty-three State Representative Districts and part of a twenty-fourth State Representative District. That with 150 State House seats in the State Legislature, and with the 1970 U. S. Census of population, each State Representative District has about 74,000 or about 75,000 people, and each U. S. Congressional District in Harris County, has about 400,000 people, yet both candidates have to get five per cent of the vote cast for Governor in the last preceding general election in the respective districts, to their nominating petition, but not to exceed 500 signatures. That 500 signatures to a nominating petition for a Congressional candidate is considered a reasonable number.

2. An oath to the Application is required: By Art. 13.51, V.A.T.S.,

Art. 1351 Oath to application

To every citizen who signs such application, there shall be administered the following oath, which shall be reduced to writing and attached to such application:

"I know the contents of the foregoing application; I have not participated in the general primary election or the runoff primary election of any party which has nominated, at either such election, a candidate for the office for which I desire _____ (here insert the name of the candidate) to be a candidate; I am a qualified voter at the next general election under the Constitution and laws in force and have signed the above application of my own free will." One certificate of the officer before whom the oath is taken may be so made as to apply to all to whom it was administered.

The oath requirement and the acompanying Notary Public or Notary Publics, adds to the cost of becoming an independent candidate, and requiring a price to be paid to become an independent candidate. Where an individual goes to the home or office of a Notary Public to have an instrument notarized, is the notarizing worth more if the Notary Public has to go out in the streets, the highways and by-ways, here and there where a voter can be found, who has not voted in the first primary or second primary election, and who is willing to sign his or her name to such a nominating petition?

3. An independent candidate must obtain the requisite number of signatures within 30 days. 4. That one who circulates his nominating petition to get on the ballot as an independent candidate can only begin to circulate such nominating petition after the first and second run-off primary election of both major political parties, and the only voters eligible to sign such petition are those who did not vote in either primary.

2.

WHETHER ART. 13.50 TEXAS ELECTION CODE, V.A.T.S., VIOLATES THE CONSTITUTION OF THE UNITED STATES, SECTION 1, AMENDMENT XIV, IN SUCH ARTICLE'S PROVISIONS AND REQUIREMENTS FOR AN INDEPENDENT CANDIDATE TO GET NAME ON GENERAL ELECTION BALLOT?

One of the points in this case is candidacy, and the right of voters to vote for an indepenednt candidate. Another important question to be considered in this case is whether the burdens, impediments and restrictions that are alleged to be placed upon independent candidates by Art. 13.50 of the Texas Election Code, are to be tested by the traditional "rational basis" test, or by the more strict and exacting "compelling State interest" standard. *Manson v. Edwards,* 345 F. Supp. 719, U.S.D.C. East Mich. (1972), and citing *Dunn v. Blumstein,* 405 U.S. 330, 92 S.Ct. 995, 31 L.Ed.2d 274 (1972). That the lower Court decided to apply the "compelling state interest" test. The compelling interest test is usually applied where there is an infringement on a fundamental right, such as the right to vote. Where the State in some degree denies a candidacy, does that deny to some citizens the opportunity to vote for the candidate of their choice?

There is a question in this case that is similar to the one that was stated in *Bullock v. Carter,* 405 U.S. 134 (1972), namely, Whether the statute creates barriers to candidates's access to the general election ballot from whom voters might choose? And a related question is, What is the nature and extent of such candidate restrictions on voters? To try and answer the first question, the answer is "Yes", Art. 13.50 creates barriers to ac-

cess to the general election ballot by independent candidates. The answer to the second question is that it denies to some voters the opportunity to vote for the candidate of their choice in the general election.

In the case of *Evans v. Cornman,* 398 U.S. 419, 26 L.Ed.2d 370, 90 S.Ct. 1752 (1970) the Court stated at page 422, "And before that right can be restricted, the purpose of the restriction and the assertedly overriding interests served by it must meet close constitutional scrutiny." And also, "* * * once the franchise is granted to the electorate, lines may not be drawn which are inconsistent with the Equal Protection Clause of the Fourteenth Amendment." *Harper v. Virginia Board of Elections,* 383 U.S. 663, 665, 16 L.Ed. 2d 169, 171, 86 S.Ct. 1079 (1966); see *Williams v. Rhodes,* 393 U.S. 23, 29, 21 L. Ed. 24, 30, 89 S.Ct. 5 (1968). And at 398 U.S. 423, the Court speaks of "* * * 'fencing out' from the franchise a sector of the population" * * *. And this prompts the thought of whether by the Texas Anti-raiding statute, the State of Texas has fenced off for the major political parties and from the non-partisan or independent candidates all of those voters who participate in the first and second primary election, so that those voters are not eligible to sign the nominating petition of an independent candidate. (Tr. 55-56).

That where an independent candidate may in some instances get on the general election ballot, and even if in some instances the route of the independent candidate to the general election ballot may not be as difficult as for the major political party candidate, still, the independent candidate has a hard row to hoe to win a general election contest with a major party candidate (Tr. 57-59).

3.

WHAT IS AN APPROPRIATE MEASURING ROD AND GUIDELINES FOR THE STATE OF TEXAS TO OBSERVE IN PROVIDING BY STATE STATUTE HOW AN INDEPENDENT CANDIDATE CAN GET HIS NAME ON THE GENERAL ELECTION BALLOT, WITHIN THE FRAMEWORK OF ALL CONSTITUTIONAL SAFEGUARDS?

As the Three-Judge Court said in its opinion of *Raza Unida Party v. Bullock*, 349 F. Supp. 1272, at Pages 1275 and 1276, (pertaining to those other cases with which this case is consolidated) "While the Supreme Court of the United States has delineated on the extreme end of the spectrum those combinations of restrictions which unconstitutionally impede the election process, *Williams v. Rhodes*, 393 U.S. 23 (1968), and those on the other hand which do not, *Jenness v. Fortson*, 403 U.S. 431 (1971) this case presents a new combination which falls squarely in the middle.

Under the rules laid down for independent candidates in the case of *Jenness v. Fortson*, 403 U.S. 431, at pages 438 and 439, 29 L.Ed.2d 560, 561, it appears that Art. 13.50 V.A.T.S., Texas Election Code, is violative of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States, when applied to those who attempt to become independent candidates for a State office, in Texas, because the following provisions of the Georgia Statute pertaining to independent candidates, which had met close constitutional scrutiny were: (1) Nominating petition signed by five per cent of the number of registered voters at the last general election for the office in question; (2) The total time for

circulating the petition is 180 days; (3) A voter may sign a petition even though he has signed others; (4) a person who has voted in a party primary election is fully eligible to sign a petition; (5) No signature on a nominating petition needs to be notarized; (6) The signer of a petition is not required to state that he intends to vote for that candidate at the election.

CONCLUSION

One of the principles upon which the United States of America was founded is Independence, and while Independence in itself does not merit any special favor from the State, nor should it merit any special disfavor from the State, still, it is respectfully submitted to the Court that a citizen who assays to become an independent candidate for the State Legislature or any other office, and who does meet the "compelling state interest" test of being a candidate in good faith, because of having tried diligently to attain and to accomplish the requirements of the State Statute,—(* * * "Yes, sir, I made a very good-faith attempt to get 500 signatures, I began the canvassing immediately after the second Primary date, June 5th, and canvassed up until the last day, and I obtained 322 signatures by my count, * * *." (Tr. 54)) should not be placed under too many handicaps by Texas statutory provisions to get his name on the general election ballot as an independent candidate.

For the reasons stated above, it is respectfully submitted to the Court that the Judgment of the Lower Court be reversed, and that the Court declare Article 13.50 V.A.T.S., Texas Election Code, unconstitutional, and for

such other and further relief that the Supreme Court consider meet and just.

Respectfully submitted,

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